

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 3 TRANSPORTATION CONFORMITY

20.11.3.1 ISSUING AGENCY: Albuquerque/ Bernalillo County Air Quality Control Board.
[7/1/98; 20.11.3.1 NMAC - Rn, 20 NMAC 11.03.I.1, 6/1/02]

20.11.3.2 SCOPE:

A. Action Applicability:

(1) Except as provided for in Subsection C of 20.11.3.2 NMAC or 20.11.3.223 NMAC, conformity determinations are required for:

(a) the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the Metropolitan Planning Organization (MPO) or U.S. Department of Transportation (DOT);

(b) the adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the MPO or DOT; and

(c) the approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under 20.11.3 NMAC for individual projects, which are not FHWA/FTA projects. However, 20.11.3.218 NMAC applies to such projects if they are regionally significant.

B. Geographic Applicability: The provisions of 20.11.3 NMAC shall apply to the area within Bernalillo County for which the area is designated nonattainment or has a maintenance plan for transportation-related criteria pollutants.

(1) The provisions of 20.11.3 NMAC apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

(2) The provisions of 20.11.3 NMAC apply with respect to emissions of the following precursor pollutants:

(a) Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;

(b) NO_x in NO₂ areas; and

(c) VOC, NO_x, and PM₁₀ in PM₁₀ areas if the EPA Regional Administrator or the director of the air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of 20.11.3 NMAC apply to maintenance areas for 20 years from the date EPA approves the areas request under section 107(d) of the Clean Air Act (CAA) for re-designation to attainment, unless the applicable implementation plan specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

C. Limitations:

(1) Projects subject to 20.11.3 NMAC for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

[7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.I.2, 6/1/02]

20.11.3.3 STATUTORY AUTHORITY: 20.11.3 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[7/1/98; 20.11.3.3 NMAC - Rn, 20 NMAC 11.03.I.3, 6/1/02]

20.11.3.4 DURATION: Permanent.

[7/1/98; 20.11.3.4 NMAC - Rn, 20 NMAC 11.03.I.4, 6/1/02]

20.11.3.5 EFFECTIVE DATE: July 1, 1998, unless a later date is cited at the end of a section.

[7/1/98; 20.11.3.5 NMAC - Rn, 20 NMAC 11.03.I.5, & A, 6/1/02]

20.11.3.6 OBJECTIVE: The objective of 20.11.3 NMAC is to implement section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States DOT, and by the MPO or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the Bernalillo County portion of the SIP. 20.11.3 NMAC sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

[7/1/98; 20.11.3.6 NMAC - Rn, 20 NMAC 11.03.I.6, 6/1/02]

20.11.3.7 DEFINITIONS: Terms used but not defined in 20.11.3 NMAC shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority. In addition to the definitions in this section, 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

A. Air Agency: means the Air Quality Division (AQD) of the City of Albuquerque Environmental Health Department (EHD). The EHD, or its successor agency or authority, as represented by the department Director or his/her designee, is the lead air quality planning agency for Albuquerque/Bernalillo County nonattainment/maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB regulations.

B. Air Quality Credit: means an air pollution emissions reduction benefit specifically identified by the TCTC that is attributable to a proposed TCM or LUM described in the TIP and/or MTP for the purpose of reducing motor vehicle air pollutants in order to achieve conformity. Air quality credits must not have been used to establish existing MVEBs.

C. Albuquerque Metropolitan Planning Area (AMPA): means that portion of State Planning and Development District 3 which comprises the area for which federal transportation funding allocated for areas of 200,000 or greater population is expended. The AMPA is described in the most recent transportation planning documents of the MPO.

D. Applicable Implementation Plan: is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

E. CAA: means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

F. Cause or Contribute to a New Violation: for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

G. Clean Data: means air quality monitoring data determined by EPA to meet the requirements of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

H. Conformity Analysis: means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

I. Conformity Determination: means the demonstration of consistency with motor vehicle emissions budgets for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national

ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not:

- (1) cause or contribute to any new violations of any standard in any area;
- (2) increase the frequency or severity of any existing violation of any standard in any area; or
- (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

J. Consultation: means the process by which affected agencies identified in 20.11.3.202 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful input, and, prior to taking any action, consider the views of the other agencies, and (except with respect to those actions for which only notification is required and those actions subject to (Subsection C of 20.11.3.202 NMAC and Subparagraph (g), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC) respond in writing to substantive written comments in a timely manner prior to any final decision on such action.

K. Control Strategy Implementation Plan Revision: is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

L. Design Concept: means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive bus way, etc.

M. Design Scope: means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

N. DOT: means the United States Department of Transportation.

O. EPA: means the United States Environmental Protection Agency.

P. FHWA: means the Federal Highway Administration of DOT.

Q. FHWA/FTA PROJECT: for the purpose of 20.11.3 NMAC, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

R. Fiscally Constrained: is as defined in 23 CFR Part 450.

S. Forecast Period: with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR Part 450.

T. FTA: means the Federal Transit Administration of DOT.

U. Highway Project: is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

- (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

V. Horizon Year: is a year for which the transportation plan describes the envisioned transportation system according to 20.11.3.203 NMAC.

W. Hot-Spot Analysis: an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

X. Increase the Frequency or Severity: means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Y. Land Use Measure (LUM): means a land use action, set of land use actions, or a land use plan specifically identified in the TIP and/or MTP and used by the MPO as the basis for air quality credits used to achieve air quality conformity. A LUM is an activity adopted as an ordinance by a municipal government, county government, or other entity empowered under the laws of the State of New Mexico to adopt land use actions and which may include, but not be limited to, planning and platting actions, subdivisions of land, zoning actions, or annexation/zoning actions. A LUM may be incorporated into the applicable implementation plan. The interagency consultation procedure shall be utilized to clarify any issues related to this definition.

Z. Lapse: means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

AA. Local Publicly Owned Transit Operator: means the current transit operator, the City of Albuquerque.

BB. Maintenance Area: means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

CC. Maintenance Plan: means an implementation plan under section 175A of the CAA, as amended.

DD. Metropolitan Planning Organization (MPO): is that organization designated as being responsible, together with the State DOT, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.

EE. Middle Rio Grande Council of Governments (MRGCOG): means the association of local governments within New Mexico State Planning and Development District 3 (Bernalillo, Sandoval, Torrance, and Valencia Counties), which is designated by the Governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque Metropolitan Planning Area.

FF. Milestone: has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

GG. Motor Vehicle Emissions Budget (MVEB): is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

HH. National Ambient Air Quality Standards (NAAQS): are those standards established pursuant to section 109 of the CAA.

II. NEPA: means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

JJ. NEPA Process Completion: for the purposes of 20.11.3 NMAC, with respect to FHWA and FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

KK. Nonattainment Area: means any geographic region of the United States, which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

LL. Project: means a highway project or transit project.

MM. Protective Finding: means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

NN. Public Involvement Committee (PIC): means the permanent advisory committee established by the MRGCOG to provide proactive public input to the transportation planning process.

OO. Recipient of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws: means any agency at any level of State, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

PP. Regionally Significant Project: means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes,

etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

QQ. Safety Margin: means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

RR. Standard: means a National Ambient Air quality Standard.

SS. State Implementation Plan (SIP): (See Applicable implementation plan).

TT. State DOT: means the New Mexico State Highway and Transportation Department or its successor agency or authority, as represented by the department Secretary or his/her designee.

UU. Title 23 U.S.C.: means Title 23 of the United States Code.

VV. Transit: is mass transportation by bus, rail, or other conveyance, which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

WW. Transit Project: is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope,
- (2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made, and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

XX. Transportation Conformity Technical Committee (TCTC): means the group of transportation, planning and air quality staff of the MPO and local government staff, State DOT, EPA, FHWA, FTA, and the air agency responsible for evaluating and establishing the assumptions and circumstances for the application of transportation and air quality models.

YY. Transportation Control Measure (TCM): is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure used as the basis for air quality credits to achieve conformity and has the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. A proposed TCM shall be identified in the TIP and/or MTP. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

ZZ. Transportation Improvement Program (TIP): means a staged, multiyear, intermodal program of transportation projects covering the AMPA, which is consistent with the metropolitan transportation plan (MTP), and developed pursuant to 23 CFR Part 450.

AAA. Transportation Plan: means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450 (Long Range Transportation Plan, or most current successor document).

BBB. Transportation Project: is a highway project or transit project.

CCC. Written Commitment: for the purposes of 20.11.3 NMAC means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

DDD. Acronyms

- (1) AMPA-Albuquerque Metropolitan Planning Area
- (2) AQCB-Albuquerque/Bernalillo County Air Quality Control Board
- (3) CAA-Clean Air Act, as amended
- (4) CFR-Code of Federal Regulations
- (5) CO-Carbon monoxide
- (6) DOT-U.S. Department of Transportation
- (7) EHD-Albuquerque Environmental Health Department
- (8) EPA-U.S. Environmental Protection Agency

- (9) FHWA-Federal Highway Administration, DOT
- (10) FTA-Federal Transit Administration, DOT
- (11) ISTEA-Intermodal Surface Transportation Efficiency Act of 1991
- (12) MPO-Metropolitan Planning Organization
- (13) MRGCOG-Middle Rio Grande Council of Governments
- (14) MTP-Metropolitan Transportation Plan
- (15) MVEB-Motor Vehicle Emissions Budget
- (16) NAAQS-National Ambient Air Quality Standards
- (17) NEPA-National Environmental Policy Act
- (18) NO_x-Oxides of Nitrogen
- (19) PIC-Public Involvement Committee
- (20) PM₁₀-Particulate matter less than or equal to 10 micrometers in diameter
- (21) SIP-State Implementation Plan (applicable implementation plan)
- (22) State DOT-NM Highway & Transportation Department
- (23) STIP-State Transportation Improvement Program
- (24) TCC-Transportation Coordinating Committee
- (25) TCM-Transportation control measure
- (26) TCTC-Transportation Conformity Technical Committee
- (27) TIP-Transportation Improvement Program
- (28) UTPPB-Urban Transportation Planning Policy Board
- (29) VOC-Volatile organic compound
- (30) VMT-Vehicle Miles Traveled

[7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02]

20.11.3.8 VARIANCES: [RESERVED]

[7/1/98; 20.11.3.8 NMAC - Rn, 20 NMAC 11.03.I.8, 6/1/02]

20.11.3.9 SAVINGS CLAUSE: Any amendment to 20.11.3 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance or Board Regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part or regulation section in effect at the time the violation was committed.

[7/1/98; 20.11.3.9 NMAC - Rn, 20 NMAC 11.03.I.9, 6/1/02]

20.11.3.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of 20.11.3 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.3 NMAC.

[7/1/98; 20.11.3.10 NMAC - Rn, 20 NMAC 11.03.I.10, 6/1/02]

20.11.3.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, One Civic Plaza, Room 3023, 500 Marquette NW, Albuquerque, NM 87102.

[7/1/98; 20.11.3.11 NMAC - Rn, 20 NMAC 11.03.I.11, 6/1/02]

20.11.3.12 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS: This Part renumbers and amends 20 NMAC 11.03, Transportation Conformity, which was filed with the State Records Center and Archives on June 1, 1998 with an effective date of July 1, 1998. All references to this regulation shall be understood as a reference to this Part.

[7/1/98; 20.11.3.12 NMAC - Rn, 20 NMAC 11.03.I.12, & A, 6/1/02]

20.11.3.13 to 20.11.3.199 [RESERVED]

20.11.3.200 PRIORITY: When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

[7/1/98; 20.11.3.200 NMAC - Rn, 20 NMAC 11.03.II.1, 6/1/02]

20.11.3.201 FREQUENCY OF CONFORMITY DETERMINATIONS:

A. Conformity determinations and conformity redetermination for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of 20.11.3.201 NMAC and the applicable implementation plan.

B. Frequency of Conformity Determinations for Transportation Plans:

(1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph (g), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

C. Frequency of Conformity Determinations for Transportation Improvement Programs:

(1) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph (g), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

(3) The MPO and DOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.

(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be re-determined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in 20.11.3.223 NMAC and 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph (g), Of Paragraph (1), Of Subsection D of 20.11.3.202 NMAC. Otherwise, the existing conformity determination for the TIP will lapse.

D. Projects: FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be re-determined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.

E. Triggers for Transportation Plan and TIP Conformity Determinations: Conformity of existing transportation plans and TIPs must be re-determined within 18 months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) November 24, 1993;

(2) The date of the States initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;

(3) EPA approval of a control strategy implementation plan revision or maintenance plan, which establishes or revises a motor vehicle emissions budget;

(4) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and

(5) EPA promulgation of an implementation plan, which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

[7/1/98; 20.11.3.201 NMAC - Rn, 20 NMAC 11.03.II.2, & A, 6/1/02]

20.11.3.202 CONSULTATION:

A. General: Transportation plans and programs must be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo County. The MRGCOG, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo County. The applicable plans and programs are the TIP, which is included in the short-term transportation program for the AMPA, and the MTP. Projects in Bernalillo County but outside the AMPA, which are included in the Regional

Transportation Improvement Program for District 3, are also subject to conformity requirements. The document serving to demonstrate conformity is the Transportation/Air Quality Conformity Finding. 20.11.3 NMAC provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, State DOT, and DOT with the air agency and EPA before making conformity determinations, and by the air agency and EPA with the MPO, State DOT, and DOT in developing applicable implementation plan revisions. This Transportation Conformity Regulation is an AQCB Regulation for Bernalillo County and is included in the State Implementation Plan revision pertaining to Transportation Conformity for Bernalillo County.

B. Interagency Consultation Interagency Consultation Procedures: General Factors: The affected agencies shall participate in an interagency consultation process for the purpose of assuring that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e., transportation control measures (TCMs)), the MTP, the TIP, (under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents, and all conformity determinations required by 20.11.3 NMAC.

(1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; State DOT; local publicly-owned transit operator; local government transportation and appropriate land use planning agencies (e.g., City of Albuquerque and Bernalillo County Planning Departments); and other federal and state agencies; as appropriate.

(2) Each lead agency in the consultation process required under Subsection D of 20.11.3.202 NMAC (i.e., the agency responsible for preparing the final document subject to the interagency consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall consider the views of each agency and respond in writing to substantive written comments submitted during the formal comment period prior to making a final decision on such document. Such written response shall be made part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1), of Subsection C of 20.11.3.202 NMAC below.

(3) Project planning, public involvement, management systems, project development, and other requirements for the MPO, State DOT, and the local publicly-owned transit operator are covered by the applicable DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

C. Interagency Consultation Procedures Roles and Responsibilities:

(1) Development of transportation plans and programs and associated conformity determinations.

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP, and technical analyses related to travel demand and other associated modeling, data collection, and coordination of consultation for these activities with the agencies specified in Paragraph (1), Of Subsection B of 20.11.3.202 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO will be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in coordination with the EHD, will be the responsibility of the project-implementing agency through the NEPA process, or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO document regarding public involvement procedures for transportation plans and programs, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP. The development and maintenance processes for the TIP and MTP, including associated conformity determinations, are explained in the MRGCOGs public involvement document.

(i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft conformity finding to the AQCB for their review with a minimum of fourteen (14) calendar days to provide comments. Upon release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP, TIP, and accompanying conformity documents to the AQCB and agencies in Paragraph (1), of Subsection B of 20.11.3.202 NMAC for review and comment before adoption and final approval by the UTPPB. Following review of the conformity determination, the AQCB shall state whether the MTP and/or TIP is in compliance with the applicable implementation plan. The MPO shall provide a review and comment period consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(b)(1), 49 CFR Section 613). Appropriate briefings to the AQCB shall be provided upon request.

(ii) The MPO shall provide information and appropriate advance notification on meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on

transportation and air quality to each of the agencies specified in Paragraph (1), of Subsection B of 20.11.3.202 NMAC in accordance with the public involvement process, adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(b)(1), 49 CFR Section 613) and described in the MRGCOG's public involvement document. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.202 NMAC.

(2) Development of applicable implementation plans: Within the nonattainment/maintenance area, the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities, and coordination of these tasks with the agencies specified in Paragraph (1), of Subsection B of 20.11.3.202 NMAC through the TCTC as described in Subparagraph (a), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC. Upon release of the final draft of the SIP revision for public review, the EHD shall submit the final draft document to the UTPPB and agencies in Paragraph (1), of Subsection B of 20.11.3.202 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a 30 day review and comment period consistent with CAA requirements. Appropriate briefings to the UTPPB shall be provided upon request.

(3) The organizational level of regular consultation is described in Subsection B of 20.11.3.202 NMAC and Subsection C of 20.11.3.202 NMAC. All correspondence concerning consultation related to the Transportation Conformity SIP shall be addressed to the designated points of contact below:

- (i) EPA: Regional Administrator or designee;
- (ii) FHWA: Division Administrator or designee;
- (iii) FTA: Regional Administrator or designee;
- (iv) State DOT: Secretary of Transportation or designee;
- (v) MPO: MRGCOG Executive Director or designee;
- (vi) EHD: Director or designee;
- (vii) local publicly-owned transit operator: Chief Administrative Officer or designee;
- (viii) local governments within the nonattainment/ maintenance area: Chief

Administrative Officer or designee

(4) The MPO shall respond in writing to substantive written comments regarding the MTP, TIP, and related conformity determinations in accordance with the provisions of this Part. The project implementing agencies shall respond in writing to substantive written comments regarding projects in accordance with the provisions of this regulation. The air agency (EHD) shall respond in writing to substantive written comments regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of this Part. All formal comments (e.g., those received during the public comment period) and responses to those comments shall be included within final documents before they are forwarded for review and final approval by the FHWA/FTA and/or EPA, as appropriate.

(5) Prior to adoption of a TCM in the applicable implementation plan by the AQCB, the MPO shall, in consultation and coordination with the agencies identified in Paragraph (1), of Subsection D of 20.11.3.202 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation development processes. After approval of a TIP and/or MTP, all proposed TCMs shall be incorporated into the applicable implementation plan by the AQCB. The necessary TCMs will be specifically described in the applicable implementation plan. TCMs must also be cross-referenced to the approved TIP and/or MTP. EHD will coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan. The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in the MPO's TIP and/or MTP.

(a) In the event that implementation of a TCM is infeasible in the time frame for that measure in the applicable implementation plan (as defined in Subsection C and Subsection J of 20.11.3.7 NMAC adopted by the AQCB, the parties in the interagency consultation process established pursuant to Of Paragraph (1), of 20.11.3.202 NMAC shall assess whether such a measure continues to be appropriate. Where the MPO and the AQCB concur that a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the process described in Sub Paragraph (a) through Subparagraph (e), of Paragraph (5), of Subsection C, of 20.11.3.202 NMAC to identify and adopt a substitute TCM.

(b) Any TCM in the applicable implementation plan may be substituted by another TCM without an implementation plan revision if the proposed measure meets the following provisions of this rule:

(i) The MPO will convene the TCTC to identify and evaluate possible substitute measures. Consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) A substitute TCM must provide for equivalent or greater emissions reductions than the TCM contained in the applicable implementation plan;

(iii) A replacement TCM shall be implemented in the time frame established for the TCM contained in the applicable implementation plan. If the implementation date has already passed, a TCM selected pursuant to this rule that requires funding must be included in the first year of the next MTP and TIP adopted by the MPO; however, the substituted TCM must be implemented as soon as possible, but not later than one year from the date of the original TCM;

(iv) In order for the AQCB to adopt substitute TCMs, there must be evidence of adequate personnel, funding and authority under State or local law to implement and enforce the measures. Commitments to implement the substitute TCMs must be made by the agency with legal authority for implementation;

(v) The TCMs substituted under this section for purposes of the applicable implementation plan (as defined in Subsection C and Subsection J of 20.11.3.7 NMAC shall receive priority funding for implementation within the MPO's, MTP and TIP funding processes; and

(iv) No TCM shall be replaced until the substitute TCM has been adopted and the existing TCM in the applicable implementation plan has been rescinded by the AQCB. Adoption of a substitute TCM by the AQCB formally rescinds the previously applicable TCM and adopts the substitute measure(s).

(c) Public Participation: After the concurrence required under Subparagraph (c), of Paragraph (5), of Subsection C of 20.11.3.202 NMAC, the AQCB shall conduct a public hearing and comment process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after a reasonable public notice, which is considered to be at least 30 days prior to the hearing date. The AQCB shall ensure that:

(i) A notice given to the public by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) Each proposed plan or revision is available for public inspection in at least one location in the applicable area;

(iii) Notification has been made to the MPO, EPA, affected local agencies, and other interested parties; and

(iv) description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA within a reasonable time before the public hearing and at least 30 days prior to the close of the public comment period.

(d) Concurrence Process for Substitute TCMs:

(i) Before initiating any public participation process, the AQCB, MPO and EPA must concur with the appropriateness and equivalency of the substitute TCM;

(ii) The AQCB shall respond to all public comments and submit to EPA a summary of comments received during the public comment period along with the responses following the close of the public comment period;

(iii) The EPA shall notify the AQCB within fourteen (14) days if EPA's concurrence with the substitution has changed as a result of the public comments. Should the EPA fail to notify the AQCB within fourteen (14) days, EPA is deemed to concur;

(iv) All substitute measures must be adopted by the AQCB following the public comment period and EPA's concurrence described in Subparagraph (c), of Paragraph (5), of Subsection C of 20.11.3.202 NMAC.

(e) Technical Information: The analysis of substitute measures must be consistent with methodology used for evaluating measures in the nonattainment or maintenance plan. Where emissions models and/or transportation models have changed since those used for purposes of evaluating measures in the nonattainment or maintenance plan, the TCM to be replaced and the substitute measure(s) shall be evaluated using the latest modeling techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and assumptions must be consistent with EPA approved regional and hot-spot (for CO and PM₁₀) emissions models, the areas transportation model, and population and employment growth projections.

(f) Record Keeping: The AQCB will maintain documentation of approved TCM substitutions. The documentation will provide a description of the substitute and replaced TCMs, including the requirements and schedules. The documentation will also provide a description of the substitution process including the public and agency participation and coordination with the TCTC, the public hearing and comments process, EPA concurrence,

and AQCB adoption. The documentation will be submitted to EPA following adoption of the substitute measure(s) by the AQCB, and made available to the public as an attachment to the applicable implementation plan

(6) Adoption of land use measures (LUMs) into the applicable implementation plan: All LUMs shall be incorporated into the applicable implementation plan by the AQCB. EHD will coordinate the necessary efforts to achieve inclusion of the LUM into the applicable implementation plan. Prior to air quality credits associated with the LUM being applied to the air quality conformity determination for the TIP and/or MTP, one of the following must occur: 1) the appropriate local jurisdictions must have adopted the LUM or, 2) a written commitment to adopt the LUM by a certain date from the appropriate local jurisdictions shall have been submitted to the AQCB. The MPO shall submit the LUM or the written commitment to the AQCB and the AQCB shall submit the LUM or written commitment to the EPA for incorporation into the applicable implementation plan.

(a) In order to apply air quality credit to the air quality conformity determination, the MPO shall quantify the air quality benefits of the LUM, identify and/or develop a monitoring and reporting program which will evaluate effectiveness of the LUM, and describe any enforcement mechanisms that will ensure the success of the LUM. Sufficient detail must exist for the LUM so that relevant future land use decisions are clearly guided by the LUM.

(b) No fewer than 60 days and no more than 120 days prior to submitting the preliminary version of the MTP, TIP, and the draft conformity finding to the AQCB as required in Subsection C of 20.11.3.202 NMAC, the MPO shall submit to the AQCB the results of the monitoring and reporting program for the LUM. The MPO shall provide results of the monitoring and reporting program to the AQCB at least once every 3 years. Within the jurisdiction of the AQCB, if a person or entity responsible for implementing provisions of the LUM fails to take reasonable actions necessary to achieve the LUM, this may be deemed by the AQCB a violation of the applicable implementation plan. If the AQCB determines that the LUM is not making reasonable progress toward achieving the expected air quality benefits or if the AQCB determines that circumstances have changed such that implementation of the LUM has become infeasible, the AQCB and other responsible agency(ies) shall follow the steps outlined in Subparagraph (b), of Paragraph (7), of Subsection C of 20.11.3.202 NMAC to correct implementation deficiencies

(7) General requirements for LUMs and TCMs. Implementation plan rules that pertain to TCMs that are included in the applicable implementation plan generally apply to LUMs. Procedures for substituting LUMs shall be consistent with procedures identified for substituting TCMs.

(a) Specific performance criteria will be included in the TIP and/or MTP for each LUM and TCM. The performance criteria will include the timing for implementation, the quantification of anticipated air quality benefits, the responsible or lead agency for implementation, the method to measure whether the air quality benefits are being realized according to the timing and phasing of each LUM and TCM in the TIP and/or MTP, and any supporting policies or regulatory mechanisms needed to implement the LUM and TCM.

(b) If the AQCB determines that a LUM or TCM is not being implemented consistent with the performance criteria and, therefore, is not successfully achieving the anticipated air quality benefits, the AQCB can issue a declaration to the UTPPB and the agencies identified in Paragraph (1), of Subsection D of 20.11.3.202 NMAC that the AQCB has identified noncompliance with the applicable implementation plan. Appropriate actions will be taken by the AQCB and other responsible agencies to correct the deficiencies identified by the AQCB. Within 120 days from the date of the AQCB's declaration, the responsible agency(ies) shall submit a corrective action plan to the AQCB to address the deficiencies. LUMs or TCMs in the approved corrective action plan must comply with all requirements of this regulation pertaining to LUMs and TCMs. Failure to obtain AQCB approval of the action plan within 120 days after submission to the AQCB is a violation of this regulation.

D. Interagency Consultation Procedures: Specific Processes.

(1) Interagency consultation procedures, for the Bernalillo County nonattainment/ maintenance area, in accordance with Subsection C of 20.11.3.202 NMAC, shall involve the MPO (transportation, land use and transit members from within the AMPA), State DOT, EPA, FHWA, and FTA, and the air agency. The TCTC will serve as the agency for providing interagency consultation for the specific processes described below. The TCTC will include representatives as described in Paragraph (1), of Subsection B of 20.11.3.202 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC will meet at least quarterly and on an as-needed basis. The air agency, in consultation with the MPO, will be responsible for convening meetings and establishing meeting agendas.

(a) A TCTC shall be established by the air agency in cooperation with the MPO. The TCTC shall evaluate and participate in establishing the circumstances for the application of a transportation or air quality model (or models). Committee review will include VMT forecasting and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis in establishing motor vehicle emissions budgets; 2) developing

the MTP and the TIP; 3) developing implementation plan revisions directly applicable to transportation, and 4) making the conformity determinations and planning assumptions identified in 20.11.3.207 NMAC. The TCTC will also review assumptions, analyses and results of the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP and transportation programs. The group shall function as a cooperative interagency effort to share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through interagency consultation. Regional modeling will be the responsibility of the MPO and the air agency as appropriate. Hot-spot analysis will be the responsibility of the lead agency of the project requiring the analysis. Before new models used in hot-spot or regional emissions analysis are adopted for general use, the TCTC will be provided an opportunity to review and comment. This process also applies to consultation on the design, schedule, and funding of research and data collection efforts regarding regional transportation models developed by the MPO (e.g., household travel transportation surveys) described in 20.11.3.207 NMAC. Every reasonable effort shall be made to resolve differences. New modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

(b) The TCTC will determine which minor arterials and other transportation projects should be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept, timing, and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1), of Subsection D of 20.11.3.202 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network, which is likely to lead to a meaningful increase in a particular pollutant for which the nonattainment area exceeds the NAAQs or for an area, which is designated as a maintenance area.

(c) The TCTC will evaluate whether projects otherwise exempted from meeting the regional and hot-spot conformity analysis requirements should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects exempted from being included in a regional conformity determination. Exempt projects are identified in 20.11.3.223 NMAC. The process used to reach a determination of exemption shall include an evaluation of whether or not the exempt project will interfere with or impede the implementation of TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If substantive air quality impact comments are received which indicate that an exempt project may adversely affect air quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate action necessary to address the adverse air quality impacts.

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule, and if not, what delays have been encountered, what obstacles to their implementation have been identified, and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures beyond those already in the SIP are deemed necessary through the consultation process of this regulation, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination will be made as part of the MPOs transportation policy planning process.

(e) The MPO shall provide notification through its transportation planning process, to the agencies represented on the TCTC of revisions and amendments to the MTP and TIP, which merely add or delete exempt projects identified in 20.11.3.223 NMAC.

(f) If Bernalillo County is designated as nonattainment for PM₁₀, the consultative process as specified in Subsection D of 20.11.3.202 NMAC shall be used to coordinate the identification of projects located at sites that have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring. A quantitative PM₁₀ hot-spot analysis shall be required for these projects in accordance with Subsection B of 20.11.3.220 NMAC. The air agency, in consultation with the MPO, shall advise the appropriate lead agency responsible for project development, of the identified projects and the basis for their identification.

(g) The MPO shall provide written notification to all the agencies in the MTP, TIP and conformity determination processes, including the AQCB, of revisions or amendments to those plans which merely

add or delete exempt projects identified in 20.11.3.223 NMAC.

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by Subparagraph (c), of Paragraph (2), of Subsection G of 20.11.3.206 NMAC.

(2) Interagency consultation procedures shall include the agencies specified in Paragraph (1), Section D of 20.11.3.202 NMAC, which shall participate in the following processes:

(a) In addition to the triggers defined in 20.11.3.201 NMAC, the air agency may request a new conformity determination when emergency projects involve substantial functional, locational, and capacity changes, or that may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment, and the area includes another MPO, the responsibility for conducting conformity determinations on transportation activities, which cross borders of the MPOs or nonattainment areas, will be shared cooperatively by the agencies involved. An agreement shall be developed between the MPOs and other appropriate agencies of local and state government to address the responsibilities of each for regional emissions analysis.

(3) Although the Metropolitan Planning Area does not include all of the nonattainment/maintenance area of Bernalillo County, the MPO (which is also the Regional Planning Organization for all of Bernalillo County), in coordination with the State DOT, shall have the responsibility for conducting conformity analyses and conformity determinations on transportation activities for the entire nonattainment/ maintenance area.

(4) Interagency consultation on regionally significant non-FHWA/FTA projects:

(a) Any group, entity, or individual planning to construct a regionally significant transportation project which is not a FHWA/FTA project (including, a project for which alternative locations, design concept and scope, or the no-build option is still being considered), including those projects planned by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular basis through the MTP and TIP development processes, or as soon as they are identified, and immediate notification of the MPO of any changes to an existing plan, so that these transportation projects can be incorporated in regional emissions analysis and modeling for the nonattainment/maintenance area.

(b) The sponsor of any such regionally significant project, and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act with knowledge of any such projects through applications for approval, permitting or funding or otherwise, shall disclose them to the MPO in a timely manner. Such disclosures should be made not later than the first occasion on which any of the following actions is sought: any UTPPB action, or other action by government decision making bodies, necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project. At the earliest opportunity, the MPO should apprise the agencies participating in the consultation process identified above in Paragraph (1), of Subsection D of 20.11.3.202 NMAC of these projects and include them in the conformity analysis networks.

(c) In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant projects shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purpose of 20.11.3.218 NMAC.

(d) For the purposes of this section and 20.11.3.218 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any UTPPB action, or other action by government decision making bodies, necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(5) When there is not sufficient information to model the projects described in Paragraph (4), of Subsection D of 20.11.3.202 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, and design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4), of Subsection D of 20.11.3.202 NMAC.

(6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting information on the approved MTP/TIP/conformity determination or adopted SIP revisions, respectively to all agencies listed in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

E. Resolving Conflicts:

(1) The air agency and the MPO (or State DOT where applicable) shall make a good-faith effort to address the major concerns of the other party and reach a resolution. In the event they are unable to reach agreement, the conflict shall be escalated to the governor.

(2) In the event that the parties agree that every reasonable effort has been made to address major concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing of the inability to resolve concerns or agree upon the final decision/action. Notification shall be provided by registered mail. This subparagraph shall be cited by the MPO in any such notification to the air agency.

(3) The air agency has 14 calendar days from the date of receipt of notification as required in Paragraph (2), of Subsection E of 20.11.3.202 NMAC to appeal to the Governor. Notification shall be provided by registered mail. This paragraph shall be cited by the air agency in any notification of a conflict which may require action by the Governor or his/her designee. If the air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The Governor or his/her designee shall issue a written decision on the appeal within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the Governor within 14 calendar days from receipt of written notification, the MPO may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the members or staff of: the AQCB, Director of the City or County EHD, Secretary of the Environment Department, Chiefs of the State Air Quality or Air Pollution Control Bureaus, Environmental Improvement Board, Secretary of the State Highway and Transportation Department, State Highway Commission, or an MPO.

F. Public Consultation Procedures: Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[7/1/98; 20.11.3.202 NMAC - Rn, 20 NMAC 11.03.II.3, & A, 6/1/02]

20.11.3.203 CONTENT OF TRANSPORTATION PLANS:

A. Transportation Plans Adopted After January 1, 1997 in Serious, Severe or Extreme Ozone Non-Attainment Areas and in Serious CO Nonattainment Areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The MPO, in developing the transportation plan in consultation with the affected agencies identified in 20.11.3.202 NMAC, may choose any years to be horizon years, subject to the following restrictions:

- (a) Horizon years may be no more than 10 years apart;
- (b) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;
- (c) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and
- (d) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(a) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by 20.11.3.202 NMAC;

(b) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network, which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit

facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope and operating policies that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(c) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

B. Moderate Areas Reclassified to Serious: Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of Subsection A of 20.11.3.203 NMAC within two years from the date of reclassification.

C. Transportation Plans for Other Areas: Transportation plans for other areas must meet the requirements of Subsection A of 20.11.3.203 NMAC at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of 20.11.3.206 NMAC through 20.11.3.216 NMAC.

D. Savings: The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

[7/1/98; 20.11.3.203 NMAC - Rn, 20 NMAC 11.03.II.4, 6/1/02]

20.11.3.204 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE NEPA PROCESS:

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in of 20.11.3.206 NMAC through 20.11.3.216 NMAC for projects not from a TIP before NEPA process completion.

[7/1/98; 20.11.3.204 NMAC - Rn, 20 NMAC 11.03.II.5, 6/1/02]

20.11.3.205 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS: Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR Part 450 in order to be found in conformity. The determination that the MTP and TIP are fiscally constrained is made through the MPOs transportation planning process, which includes the agencies represented in the consultation process described in 20.11.3.202 NMAC.

[7/1/98; 20.11.3.205 NMAC - Rn, 20 NMAC 11.03.II.6, 6/1/02]

20.11.3.206 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:

A. In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in 20.11.3 NMAC are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and of court orders for the area, which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

B. Table 1 in this paragraph indicates the criteria and procedures in 20.11.3.207 NMAC through 20.11.3.216 NMAC, which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsection C of 20.11.3.206 NMAC through Subsection F of 20.11.3.206 NMAC explains when the budget, emissions reduction, and hot-spot tests are required for each pollutant. Subsection G of 20.11.3.206 NMAC addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

TABLE 1. CONFORMITY CRITERIA

All Actions at all times:

20.11.3.207 NMAC	Latest planning assumptions.
20.11.3.208 NMAC	Latest emissions model.
20.11.3.209 NMAC	Consultation.

Transportation Plan:

Subsection B, of 20.11.3.210 NMAC	TCMs.
20.11.3.215 or 20.11.3.216 NMAC	Emissions budget or Emission reduction.

TIP:

Subsection C, of 20.11.3.210 NMAC TCMs.
20.11.3.215 or 20.11.3.216 NMAC Emissions budget or Emission reduction.

Project (From a Conforming Plan and TIP):

20.11.3.211 NMAC Currently conforming plan and TIP.
20.11.3.212 NMAC Project from a conforming plan and TIP.
20.11.3.213 NMAC CO and PM₁₀ hot-spots.
20.11.3.214 NMAC PM₁₀ control measures.

Project (Not From a Conforming Plan and TIP):

Subsection D, of 20.11.3.210 NMAC TCMs.
20.11.3.211 NMAC Currently conforming plan and TIP.
20.11.3.213 NMAC CO and PM₁₀ hot-spots.
20.11.3.214 NMAC PM₁₀ control measures.
20.11.3.215 or 20.11.3.216 NMAC Emissions budget or Emission reduction.

C. Ozone Nonattainment and Maintenance Areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determination must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by 20.11.3.215 NMAC for conformity determinations made:

(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by 20.11.3.216 NMAC for conformity determinations made:

(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NO_x, as required by 20.11.3.216 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision (usually marginal and below areas) must satisfy one of the following requirements:

(a) The emission reduction tests required by 20.11.3.216 NMAC; or

(b) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by Subsection P of 20.11.3.200 NMAC must be satisfied using the submitted motor vehicle emissions budget(s) (as described in Paragraph (1), of Subsection C of 20.11.3.206 NMAC).

(5) Notwithstanding Paragraph (1) and Paragraph (2), of Subsection C of 20.11.3.206 NMAC, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:

(a) The emissions reduction tests as required by 20.11.3.216 NMAC;

(b) The budget test as required by 20.11.3.215 NMAC, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of Paragraph (1), of Subsection C of 20.11.3.206 NMAC; or

(c) The budget test as required by 20.11.3.215 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data.

D. CO Nonattainment and Maintenance Areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot-spot test required by Subsection A of 20.11.3.213 NMAC at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot-spot test required by Subsection B of 20.11.3.213 NMAC.

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by 20.11.3.215 NMAC for conformity determinations made:

(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) Except as provided in Paragraph (4), of Subsection D of 20.11.3.206 NMAC, in CO nonattainment areas the emission reduction tests must be satisfied as required by 20.11.3.216 NMAC for conformity determinations made:

(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

(a) The emission reduction tests required by Subsection Q of 20.11.3.200 NMAC; or

(b) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.11.3.215 NMAC must be satisfied using the submitted motor vehicle emissions budget(s) (as described in Paragraph (2), of Subsection D of 20.11.3.206 NMAC).

E. PM₁₀ Nonattainment and Maintenance Areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in PM₁₀ nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in PM₁₀ non-attainment or maintenance areas must satisfy the hot-spot test required by Subsection A of 20.11.3.213 NMAC.

(2) In PM₁₀ nonattainment and maintenance areas the budget test must be satisfied as required by 20.11.3.215 NMAC for conformity determinations made:

(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM₁₀ nonattainment areas the emission reduction tests must be satisfied as required by 20.11.3.216 NMAC for conformity determinations made:

(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or

(c) If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

F. NO₂ Nonattainment and Maintenance Areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in NO₂ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by 20.11.3.215 NMAC for conformity determinations made:

(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO₂ nonattainment areas the emission reduction tests must be satisfied as required by 20.11.3.216 NMAC for conformity determinations made:

(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

G. Isolated Rural Non-Attainment and Maintenance Areas: This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPOs metropolitan transportation plan or TIP. This paragraph does not apply to “doughnut” areas, which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of, Sections: 207; 208; 209; 213; 214; and Subsection D, of Section 210; of 20.11.3 NMAC. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of Subsection B of 20.11.3.213 NMAC (“Localized CO and PM₁₀ violations (hot-spots)”).

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emissions reduction tests as described in Subsections C through F, of 20.11.3.206 NMAC, with the following modifications:

(a) When the requirements of 20.11.3.215 NMAC and 20.11.3.216 NMAC apply to isolated rural nonattainment and maintenance areas, references to transportation plan or TIP should be taken to mean those projects in the statewide TIP which are in the rural nonattainment or maintenance area.

(b) In isolated rural nonattainment and maintenance areas that are subject to 20.11.3.215 NMAC, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(i) 20.11.3.215 NMAC;

(ii) 20.11.3.216 NMAC (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2), of Subsection D of 20.11.3.216 NMAC);

(iii) as demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of

any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(c) The choice of requirements in Subparagraph (b), of Paragraph (2) of Subsection G of 20.11.3.206 NMAC and the methodology used to meet the requirements of Subparagraph (b), of Paragraph (2) of Subsection G of 20.11.3.206 NMAC must be determined through the interagency consultation process required in Subparagraph (h), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in Subsection E of 20.11.3.202 NMAC, which applies for any State air agency comments on a conformity determination.

[7/1/98; 20.11.3.206 NMAC - Rn, 20 NMAC 11.03.II.7, 6/1/02]

20.11.3.207 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:

A. The conformity determination, with respect to all other applicable criteria in 20.11.3.208 NMAC through 20.11.3.216 NMAC, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of Subsections B through F of 20.11.3.207 NMAC.

B. Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

C. The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership has changed since the previous conformity determination. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

D. The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

E. The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures, which have already been implemented. This information shall be made as part of the interagency consultation procedures described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by 20.11.3.202 NMAC.

[7/1/98; 20.11.3.207 NMAC - Rn, 20 NMAC 11.03.II.8, 6/1/02]

20.11.3.208 CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL:

A. The conformity determination must be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans for Bernalillo County is used for the conformity analysis. When options are allowed by EPA, the TCTC, as part of the interagency consultation described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC, will be responsible for determining the most appropriate emission estimation model to be used.

B. EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

C. Transportation plan and TIP conformity analysis for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may

continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

[7/1/98; 20.11.3.208 NMAC - Rn, 20 NMAC 11.03.II.9, 6/1/02]

20.11.3.209 CRITERIA AND PROCEDURES: CONSULTATION: Conformity must be determined according to the consultation procedures in 20.11.3 NMAC and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR Part 450. Until the implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination must be made according to Subsection A and Subsection D of 20.11.3.202 NMAC and the requirements of 23 CFR Part 450.

[7/1/98; 20.11.3.209NMAC - Rn, 20 NMAC 11.03.II.10, 6/1/02]

20.11.3.210 CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATIONS OF TCMs:

A. The transportation plan, TIP, or any FHWA/FTA project, which is not from a conforming plan and TIP, must provide for the timely implementation of TCMs from the applicable implementation plan.

B. For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

C. For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

D. For FHWA/FTA projects, which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

[7/1/98; 20.11.3.210 NMAC - Rn, 20 NMAC 11.03.II.11, 6/1/02]

20.11.3.211 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP: There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

A. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements specified in 20.11.3.201 NMAC.

B. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of 20.11.3 NMAC are satisfied.

[7/1/98; 20.11.3.211 NMAC - Rn, 20 NMAC 11.03.II.12, 6/1/02]

20.11.3.212 CRITERIA AND PROCEDURES: PROJECTS FROM A PLAN AND TIP:

A. The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of Subsection B of 20.11.3.206 NMAC for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of Subsection B of 20.11.3.212 NMAC and from a conforming program if it meets the requirements of Subsection C of 20.11.3.212 NMAC. Special provisions for TCMs in an applicable implementation plan are provided in Subsection D of 20.11.3.212 NMAC.

B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy 20.11.3.203 NMAC (Content of transportation plans), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by Subsection A of 20.11.3.222 NMAC in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

D. TCMs: This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

[7/1/98; 20.11.3.212 NMAC - Rn, 20 NMAC 11.03.II.13, 6/1/02]

20.11.3.213 CRITERIA AND PROCEDURES: LOCALIZED CO AND PM₁₀ VIOLATIONS (hot-spots):

A. This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of Paragraph (1), of Subsection D of 20.11.3.206 NMAC and the methodology requirements of 20.11.3.220 NMAC.

B. This paragraph applies for CO nonattainment areas as described in Paragraph (1), Of Subsection D of 20.11.3.206 NMAC. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of Subparagraph (a), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC and the methodology requirements of 20.11.3.220 NMAC.

[7/1/98; 20.11.3.213 NMAC - Rn, 20 NMAC 11.03.II.14, 6/1/02]

20.11.3.214 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM₁₀ CONTROL MEASURES:

The FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

[7/1/98; 20.11.3.214 NMAC - Rn, 20 NMAC 11.03.II.15, 6/1/02]

20.11.3.215 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:

A. The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through G of 20.11.3.206 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of 20.11.3.215 NMAC are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

B. Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the last year of the transportation plans forecast period, and for any intermediated years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(a) emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that years motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not established a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(a) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by Subsection C of 20.11.3.200 NMAC shall determine what must be considered in order to make such a finding;

(b) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plans motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(c) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plans motor vehicle emissions budget(s) for these years.

C. Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

D. Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of 20.11.3.219 NMAC and Subparagraph (a), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

(2) The regional emissions analysis may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plans forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in Subsection B of 20.11.3.215 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

E. Motor Vehicle Emissions Budgets in Submitted Control Strategy Implementation Plan Revisions and Submitted Maintenance Plan:

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy

implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(2) If EPA has declared an implementation plan submissions motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by 20.11.3.216 NMAC must be satisfied.

(3) If EPA declares an implementation plan submissions motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy 20.11.3.211 NMAC and 20.11.3.212 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a projects conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes, including a motor vehicle emissions budget(s) established for any year beyond the time period addressed by a maintenance plan, unless the following minimum criteria are satisfied:

(a) the submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;

(b) before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(c) the motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(e) the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 20.11.3.7 NMAC for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the States compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones. [7/1/98; 20.11.3.215 NMAC - Rn, 20 NMAC 11.03.II.16, 6/1/02]

20.11.3.216 CRITERIA AND PROCEDURES: EMISSION REDUCTIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS:

A. The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in Subsections C through G of 20.11.3.206 NMAC. It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

B. This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) and in moderate with design value greater than

12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections E through H of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection D of 20.11.3.216 NMAC:

- (1) the emissions predicted in the Action scenario are less than the emissions predicted in the Baseline scenario, and this can be reasonably expected to be true in the periods between the analysis years; and
- (2) the emissions predicted in the Action scenario are lower than 1990 emissions by any nonzero amount.

C. This criterion may be met in PM₁₀ and NO₂ nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections E through H of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection D of 20.11.3.216 NMAC, one of the following requirements is met:

- (1) the emissions predicted in the Action scenario are less than the emissions predicted in the Baseline scenario, and this can be reasonably expected to be true in the periods between the analysis years; or
- (2) the emissions predicted in the Action scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

D. Pollutants: The regional emissions analysis must be performed for the following pollutants:

- (1) VOC in ozone areas;
- (2) NO_x in ozone areas, unless the EPA Administrator determines that additional reductions of NO_x would not contribute to attainment;
- (3) CO in CO areas;
- (4) PM₁₀ in PM₁₀ areas;
- (5) Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; and
- (6) NO_x in NO₂ areas.

E. Analysis Years: The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plans forecast period must also be an analysis year.

F. Baseline Scenario: The regional emissions analysis required by Subsections B and C of 20.11.3.212 NMAC must estimate the emissions that would result from the Baseline scenario in each analysis year. The Baseline scenario must be defined for each of the analysis years. The Baseline scenario is the future transportation system that will result from current programs, including the following (except that exempt projects list in 20.11.3.223 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC need not be explicitly considered):

- (1) all in-place regionally significant highway and transit facilities, services and activities;
- (2) all ongoing travel demand management or transportation system management activities; and
- (3) completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

G. Action Scenario: The regional emissions analysis required by Subsections B and C of 20.11.3.216 NMAC must estimate the emissions that would result from the Action scenario in each analysis year. The Action scenario must be defined for each of the analysis years. The Action scenario is the transportation system that would result from the implementation of the proposed action (MTP, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant project in the nonattainment area. The Action scenario must include the following (except that exempt projects list in 20.11.3.223 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC need not be explicitly considered):

- (1) all facilities, services, and activities in the Baseline scenario;

(2) completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) all travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) the incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) completion of all expected regionally significant FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

H. Projects Not From a Conforming Transportation Plan and TIP: For the regional emissions analysis required by Subsections B and C of 20.11.3.216 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the Baseline scenario must include the project with its original design concept and scope, and the Action scenario must include the project with its new design concept and scope.

[7/1/98; 20.11.3.216 NMAC - Rn, 20 NMAC 11.03.II.17, 6/1/02]

20.11.3.217 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES:

A. Disapprovals:

(1) if EPA approves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) if EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to 20.11.3.206 NMAC.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

B. Failure to Submit and Incompleteness: In areas where EPA notifies the State, MPO, and DOT of the States failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

C. Federal Implementation Plans: If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

[7/1/98; 20.11.3.217 NMAC - Rn, 20 NMAC 11.03.II.18, 6/1/02]

20.11.3.218 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS.

A. Except as provided in Subsection B of 20.11.3.218 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determinations regional emissions analyses), even if conformity status is currently lapsed; and the projects design concept and scope has not changed significantly from those analyses; or

(2) there is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of 20.11.3.215 NMAC and/or 20.11.3.216 NMAC for a project not from a conforming transportation plan and TIP).

B. In isolated rural nonattainment and maintenance areas subject to Subsection G of 20.11.3.206 NMAC, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination as supported by documentation acceptable to the director of the air agency for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the projects design concept and scope has not changed significantly; or

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements 20.11.3.215 NMAC and/or 20.11.3.216 NMAC for projects not from a conforming transportation plan and TIP).

[7/1/98; 20.11.3.218 NMAC - Rn, 20 NMAC 11.03.II.19, 6/1/02]

20.11.3.219 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS:

A. General Requirements:

(1) The regional emissions analysis required by 20.11.3.215 NMAC and 20.11.3.216 NMAC for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 20.11.3.202 NMAC. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice and should be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(a) the regulatory action is already adopted by the enforcing jurisdiction;

(b) the project, program, or activity is included in the applicable implementation plan;

(c) the control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of 20.11.3.215 NMAC contains a written commitment to the project, program, or activity by the agency with authority to implement it; or

(d) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(a) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

(b) The conformity implementation plan revision required in 40 CFR 51.390 must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of 20.11.3.216 NMAC must make the same assumptions in both the Baseline and Action scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to Subparagraph (a), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

B. Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of Paragraphs (1), through (3), of Subsection B, 20.11.3.219 NMAC if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by Subparagraph (a), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC. Network-based travel models must at a minimum satisfy the following requirements:

(a) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is preferably 3-5 years, but not more than 10 years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;

(b) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information. Future speeds should be determined through interagency consultation described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC;

(c) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;

(d) A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(e) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes and should be determined through interagency consultation described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and

(f) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sample on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures Subparagraph (a), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

C. In all areas not otherwise subject to Subsection B of 20.11.3.219 NMAC, regional emissions analyses must use those procedures described in Subsection B of 20.11.3.219 NMAC if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to Subsection B of 20.11.3.219 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

D. PM₁₀ From Construction-Related Fugitive Dust:

(a) For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(b) In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

E. Reliance on Previous Regional Emissions Analysis:

(1) The TIP may be demonstrated to satisfy the requirements of 20.11.3.215 NMAC (Motor vehicle emissions budget) or 20.11.3.216 NMAC (Emission reductions in areas without motor vehicle emissions budgets) without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:

(a) the TIP contains all projects which must be started in the TIPs timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(b) all TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plans regional emissions at the time of the transportation plans conformity determination; and

(c) the design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of 20.11.3.215 NMAC or 20.11.3.216 NMAC without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

(a) not regionally significant; or

(b) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plans regional emissions at the time of the transportation plans conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

[7/1/98; 20.11.3.219 NMAC - Rn, 20 NMAC 11.03.II.20, 6/1/02]

20.11.3.220 PROCEDURES FOR DETERMINING LOCALIZED CO AND PM₁₀ CONCENTRATIONS (Hot-Spot Analysis):

A. CO Hot Spot Analysis:

(1) The demonstrations required by 20.11.3.213 NMAC (Localized CO and PM₁₀ violations) must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Guideline on Air Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in 20.11.3.202 NMAC and approved by the EPA Regional Administrator are used for:

(a) projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan or by the air agency's most current monitored data as sites of violation or possible violation;

(b) projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;

(c) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC; and

(d) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

(2) In cases other than those described in Paragraph (1), of Subsection A of 20.11.3.220 NMAC, the demonstrations required by 20.11.3.213 NMAC may be based on either:

(a) quantitative methods that represent reasonable and common professional practice as determined through the interagency consultation process, described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC; or

(b) a qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of 20.11.3.213 NMAC are met.

B. PM₁₀ Hot-Spot Analysis:

(1) The hot-spot demonstration required by 20.11.3.213 NMAC must be based on quantitative analysis methods for the following types of projects:

(a) projects which are located at sites at which violations have been verified by monitoring;

(b) projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

(c) new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

(2) Where quantitative analysis methods are not required, the demonstration required by 20.11.3.213 NMAC may be based on a qualitative consideration of local factors.

(3) The identification of the sites described in Subparagraph (a) and Subparagraph (b), of Paragraph (1), of Subsection B of 20.11.3.220 NMAC, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in 20.11.3.202 NMAC, DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

(4) The requirements for quantitative analysis contained in this Subsection B of 20.11.3.220 NMAC will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

C. General Requirements:

(1) Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the

ratio of future to current emission factors as determined through the interagency consultation process described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

(3) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses as determined through the interagency consultation process described in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

(4) PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by Subsection A of 20.11.3.222 NMAC.

(5) CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately through the interagency consultation according to Paragraph (1), of Subsection B of 20.11.3.202 NMAC, using established Guideline methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

[7/1/98; 20.11.3.220 NMAC - Rn, 20 NMAC 11.03.II.21, 6/1/02]

20.11.3.221 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION):

A. In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) emissions will be lower than needed to provide for continued maintenance.

B. If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

C. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

D. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

E. If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

[7/1/98; 20.11.3.221 NMAC - Rn, 20 NMAC 11.03.II.22, 6/1/02]

20.11.3.222 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:

A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the

resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by 20.11.3.215 NMAC (Motor vehicle emissions budget) and 20.11.3.216 NMAC (Emission reductions in areas without motor vehicle emissions budgets) or used in the project-level hot-spot analysis required by 20.11.3.213 NMAC.

B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determination must comply with the obligations of such commitments.

C. The implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

D. If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of 20.11.3.213 NMAC, emission budget requirements of 20.11.3.215 NMAC, and emission reduction requirements of 20.11.3.216 NMAC are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 20.11.3.202 NMAC. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of 20.11.3.215 NMAC and/or 20.11.3.216 NMAC and that the project still satisfies the requirements of 20.11.3.213 NMAC, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in Subsection F of 20.11.3.202 NMAC for conformity determinations for projects. [7/1/98; 20.11.3.222 NMAC - Rn, 20 NMAC 11.03.II.23, 6/1/02]

20.11.3.223 EXEMPT PROJECTS: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 2 are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see Subparagraph (c), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

TABLE 2. EXEMPT PROJECTS

SAFETY

Railroad/highway crossing
Hazard elimination program
Safer non-Federal-aid system roads
Shoulder improvements
Increasing sight distance
Safety improvement program
Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing and/or rehabilitation
Pavement marking demonstration
Emergency relief (23 U.S.C. 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing bridges (no additional travel lanes)
Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies

- Purchase of support vehicles
- Rehabilitation of transit vehicles¹
- Purchase of office, shop, and operating equipment for existing facilities
- Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)
- Construction or renovation of power, signal, and communications systems
- Construction of small passenger shelters and information kiosks
- Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
- Rehabilitation or reconstruction of track structures, track, and track bed in existing rights-of-way
- Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹
- Construction of new bus or rail storage/ maintenance facilities categorically excluded in 23 CFR Part 771

AIR QUALITY

- Continuation of ride-sharing and van-pooling promotion activities at current levels
- Bicycle and pedestrian facilities

OTHER

Specific activities which do not involve or lead directly to construction, such as: Planning and technical studies; Grants for training and research programs; Planning activities conducted pursuant to titles 23 and 49 U.S.C.; and Federal-aid systems revisions.

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action

Noise attenuation

Emergency or hardship advance land acquisitions (23 CFR Part 712.204(d))

Acquisition of scenic easements

Plantings, landscaping, etc.

Sign removal

Directional and informational signs

Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)

Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes

Drainage projects

Note: ¹In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[7/1/98; 20.11.3.223 NMAC - Rn, 20 NMAC 11.03.II.24, 6/1/02]

20.11.3.224 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Subparagraph (c), Paragraph (1), of Subsection D of 20.11.3.202 NMAC), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

TABLE 3. PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

- Intersection channelization projects
- Intersection signalization projects at individual intersections
- Interchange reconfiguration projects
- Changes in vertical and horizontal alignment
- Truck size and weight inspection stations
- Bus terminals and transfer points

[7/1/98; 20.11.3.224 NMAC - Rn, 20 NMAC 11.03.II.25, 6/1/02]

20.11.3.225 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS: Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of 20.11.3 NMAC.

However, all subsequent regional emissions analyses required by 20.11.3.215 NMAC and 20.11.3.216 NMAC for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

[7/1/98; 20.11.3.225 NMAC - Rn, 20 NMAC 11.03.II.26, 6/1/02]

20.11.3.226 APPLICABLE LAW: The Federal conformity rules under 40 CFR Part 93 subpart A, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA section 176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) criteria and procedures in 20.11.3 NMAC will govern conformity determinations and the Federal conformity regulations contained in 40 CFR Part 93 will apply only for the portion, if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.

[7/1/98; 20.11.3.226 NMAC - Rn, 20 NMAC 11.03.II.1-27, 6/1/02]

HISTORY OF 20.11.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

Regulation No. 42, Transportation Conformity, 12/16/94.

History of Repealed Material: 20 NMAC 11.03, Transportation Conformity, filed 10/27/95 repealed and replaced by 20 NMAC 11.03, Transportation Conformity, filed 06/01/98.

Other History: Regulation No. 42, Transportation Conformity, filed 12/16/94 was reformatted, renumbered and replaced by 20 NMAC 11.03, Transportation Conformity, filed 10/27/95.

20 NMAC 11.03, Transportation Conformity, filed 06/01/98 renumbered, reformatted, amended, and replaced by 20.11.3 NMAC, effective 6/01/02.